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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,486	08/22/2003	John Charles DeBraal	6528	8735

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EXAMINER

MUSSER, BARBARA J

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,486

Applicant(s)

DEBRAAL, JOHN CHARLES

Examiner

Barbara J. Musser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 15-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/22/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-14, drawn to a method of making an insulated container stock, classified in class 156, subclass 244.11.
 - II. Claims 15-18, drawn to an insulated container stock, classified in class 428, subclass 318.4.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by a different process such as extruding the polymer film onto the paper layer and later reheating it to bond it to the foam layer.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Ben Mieliulis on 5/10/05 a provisional election was made with traverse to prosecute the invention of group I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 15-18 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dontula et al.(U.S. Patent 6,447,976).

Dontula et al. discloses laminating together a foam layer and a paper layer by extruding a molten polyethylene film between the two and pressing it to laminate together the layers in a nip.(Col. 8, ll. 4-17) Since the layers are pressed in a nip, one in the art would appreciate that the nip would have a preset gap since the purpose of such pressing is to form a uniform layer. While the reference does not specifically state the paper used is suitable for food or beverage stock, it does state any type of paper can be used. While the material formed is not intended for use as an insulated container stock, the claim does not require forming an insulated container stock, and if it did, the laminate of Dontula et al. would be capable of acting as an insulated container stock since it is made of the same materials.

Regarding claim 7, Dontula et al. discloses the nip is composed of two rollers.(Col. 8, ll. 9)

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7. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Debraal et al.(U.S Publication 2003/0021921) in view of Dontula et al.

Debraal et al. discloses forming a cup by extrusion laminating a paper layer and a foam layer.[0073] The reference does not disclose exactly what is meant by extrusion lamination nor does it disclose directing the layers through a nip. Dontula et al. discloses laminating a foam and paper layer by extrusion lamination by extruding a molten polyethylene layer between the paper and the foam and then passing the laminate through a pair of rollers in a nip.(Col. 8, ll. 4-17) It would have been obvious to one of ordinary skill in the art at the time the invention was made to laminate the paper and foam of Debraal et al. together by extruding a molten polyethylene layer between the paper and the foam since Dontula et al. discloses that is how extrusion lamination is performed and to then pass the laminate through a nip which has a pre-set gap since Dontula et al. discloses using a set of rollers to press the layers together and since the purpose of such pressing is to form a uniform layer so a pre-set gap is required. Since 10/167,463 does not fully support the claimed invention, the filing date of this application is 8/22/2003. This reference contains common inventors with the claimed invention, but the reference is applicable under 102(a) and therefore applicant cannot overcome the reference by asserting common ownership.

Regarding claim 2, Debraal et al. discloses forming a container.(Figure 1)

Regarding claims 3, 8, and 9, Debraal et al. discloses cups are made by adding a bottom to a container wall.[0020]

Regarding claims 4 and 6, Debraal et al. discloses extruding a polymer shrink film onto the side of the foam layer not bonded to the paper.[0052] While the reference does not disclose pressing the layers together this is well-known and conventional in the art when extruding as shown for example by Dontula et al.(Col. 8, ll. 4-17)

Regarding claim 5, Debraal et al. discloses additional polyethylene layers can be added to the foam and paper layers, making at least a five layer laminate.[0059]

Regarding claim 7, Dontula et al. discloses the nip is composed of two rollers.(Col. 8, ll. 9)

Regarding claims 10 and 14, Debraal et al. discloses heat shrinking the heat shrink film.[0085]

Regarding claim 11, while the references do not disclose chilling the nip into which the laminates pass, it would have been obvious to one of ordinary skill in the art at the time the invention was made to chill the rollers since the purpose of the nip rollers is to form the laminate to a pre-set thickness which would be difficult to do if the laminate exited the rollers with the polymer film joining the layers still molten as would likely occur without chilling of the rollers.

Regarding claim 12, Debraal et al. discloses the heat-shrinkable layer can be polyethylene.[0052]

Regarding claims 13 and 14, Debraal et al. discloses the molten polymer can be low density polyethylene.[0074]

Regarding claims 13 and 14, Debraal et al. does not disclose the specifics of the formation and lamination of multiple layer laminates. It would have been obvious to one

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of ordinary skill in the art at the time the invention was made to make the container by forming a three layer laminate and then extruding a heat-shrink film onto the three layer laminate to form a four layer laminate since multiple extrusion operations would be difficult to plan and could result in variation in thickness of the extruded layers since both would be molten entering the nip and therefore capable of changing thickness.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara J. Musser whose telephone number is (571) 272-1222. The examiner can normally be reached on Monday-Thursday; alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571)-272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BJM
BJM

Jessica L. Rossi
Primary Examiner
Jessica Rossi